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FILED

Date 1/25/12 By William H. Douglas

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF PESTICIDE REGULATION
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation and Petition to Revoke Probation Against: **ZAPPEN EXTERMINATING** **JOSEPH W. ZAPPEN, Owner and QM** 511 South 1st Avenue #476 Arcadia, California 91006 **Company Registration License No. PR 3982, Br. 3** **Operator License No. OPR 10234, Br. 3** and **JOHN CHARLES STROM** 1424 South Sandsprings Drive West Covina, CA 91790 **Operator License No. OPR 11528, Br.3** Respondents.	Case No. 2011-12 **FIRST AMENDED ACCUSATION AND PETITION TO REVOKE PROBATION**

William H. Douglas ("Complainant") alleges:

PARTIES

1. Complainant brings this Accusation solely in his official capacity as the Interim Registrar of the Structural Pest Control Board ("Board"), Department of Pesticide Regulation.

Company Registration Certificate No. PR 3982

2. On or about June 26, 2001, the Board issued Company Registration Certificate Number PR 3982 ("registration") to Zappen Exterminating in Branch 3, with Joseph W. Zappen ("Respondent Zappen Exterminating") as the owner and Qualifying Manager. The registration is currently under suspension for failure to comply with probation term numbers 9 and 10 of the Decision and Order in Accusation Case No. 2009-37.

Operator's License No. OPR 10234

3. On or about June 8, 2000, the Board issued Operator's License Number OPR 10234 in Branch 3 to Respondent Zappen. On or about June 26, 2001, Respondent Zappen became the owner and Qualifying Manager of Zappen Exterminating. The license is currently under suspension for failure to comply with probation term numbers 9 and 10 of the Decision and Order in Accusation Case No. 2009-37.

Operator's License No. OPR 11528

4. On or about May 29, 2007, the Board issued Operator's License Number OPR 11528 in Branch 3 to John Charles Strom ("Respondent Strom"). The license was in full force and effect at all time relevant to this matter, and will expire on June 30, 2012, unless renewed.

First Disciplinary Action:

5. In a disciplinary action entitled "*In the Matter of Accusation Against Zappen Exterminating and Joseph W. Zappen*," Case No. 2008-14, the Structural Pest Control Board issued a Decision and Order, effective on December 3, 2008, in which Respondents Zappen Exterminating's Company Registration Certificate No. PR 3982, and Zappen's Operator License No. OPR 10234 were revoked, stayed and placed on three (3) years probation under certain terms and conditions. In addition, Respondent was suspended from engaging in the practice of pest control for ten (10) business days. A true and correct copy of the Decision and Order, Stipulated Settlement and Disciplinary Order, and Accusation in Case No. 2008-14, are attached hereto as Exhibit "A", and incorporated by reference as though fully set forth herein.

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Second Disciplinary Action:

6. In a disciplinary action entitled "*In the Matter of Accusation Against Zappen Exterminating and Joseph W. Zappen,*" Case No. 2009-37, the Structural Pest Control Board issued a Decision and Order, effective on June 25, 2010, in which Respondents Zappen Exterminating's Company Registration Certificate No. PR 3982, and Zappen's Operator License No. OPR 10234 were revoked, stayed and extended the probation period from the prior disciplinary action set forth in paragraph 5 above, Accusation Case No. 2008-14, by a period of two (2) additional years, until December 30, 2013, under certain terms and conditions, including, but not limited to, an actual twenty (20) day suspension of both licenses from engaging in the practice of pest control. A true and correct copy of the Decision and Order, Stipulated Settlement and Disciplinary Order, and Accusation in Case No. 2009-37 is attached as Exhibit "B", and is incorporated by reference as though fully set forth herein.

7. Probation Term Condition 8 of the Decision and Order in Case No. 2009-37, found at page 5, provides:

> "**Violation of Probation.** Should Respondents violate probation in any respect, the Board, after giving Respondents notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation is filed against Respondents during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final."

8. On or about August 5, 2010, the Board requested that the Attorney General's Office (AGO) prepare an Accusation against Respondents Zappen Exterminating and Zappen. That Accusation was served on Respondents Zappen Exterminating and Zappen on October 22, 2010, and is currently pending before the Board.

9. On or about April 15, 2011, the Board requested that the AGO prepare a First Amended Accusation and Petition to Revoke Probation against Respondents Zappen Exterminating, Zappen and Strom, thereby automatically extending the probationary period for Respondent Zappen Exterminating and Zappen, which shall not expire until the First Amended Accusation and Petition to Revoke Probation has been acted upon by the Board.

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JURISDICTION

10. This First Amended Accusation and Petition to Revoke Probation is brought before the Structural Pest Control Board (Board), Department of Pesticide Regulations, under the authority of the following laws. All sections are referenced to the Business and Professions Code, unless otherwise indicated.

STATUTORY PROVISIONS

11. Business and Professions Code ("Code") section 8620 provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the holder, while a licensee or applicant, has committed any acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a civil penalty.

12. Code section 8624 states:

> If the board suspends or revokes an operator's license and one or more branch offices are registered under the name of the operator, the suspension or revocation may be applied to each branch office.
>
> If the operator is the qualifying manager, a partner, responsible officer, or owner of a registered structural pest control company, the suspension or revocation may be applied to the company registration.
>
> The performance by any partnership, corporation, firm, association, or registered company of any act or omission constituting a cause for disciplinary action, likewise constitutes a cause for disciplinary action against any licensee who, at the time the act or omission occurred, was the qualifying manager, a partner, responsible officer, or owner of the partnership, corporation, firm, association, or registered company whether or not he or she had knowledge of, or participated in, the prohibited act or omission.

13. Code section 8625 states:

> The lapsing or suspension of a license or company registration by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license or company registration shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such licensee or company, or to render a decision suspending or revoking such license or registration.

14. Code section 8622 states:

> When a complaint is accepted for investigation of a registered company, the board, through an authorized representative, may inspect any or all properties on which a report has been issued pursuant to Section 8516 or a notice of completion has been issued

pursuant to Section 8518 by the registered company to determine compliance with the provisions of this chapter and the rules and regulations issued thereunder. If the board determines the property or properties are not in compliance, a notice shall be sent to the registered company so stating. The registered company shall have 30 days from the receipt of the notice to bring such property into compliance, and it shall submit a new original report or completion notice or both and an inspection fee of not more than one hundred twenty-five dollars ($125) for each property inspected. If a subsequent reinspection is necessary, pursuant to the board's review of the new original report or notice or both, a commensurate reinspection fee shall also be charged. If the board's authorized representative makes no determination or determines the property is in compliance, no inspection fee shall be charged.

The notice sent to the registered company shall inform the registered company that if it desires a hearing to contest the finding of noncompliance, the hearing shall be requested by written notice to the board within 20 days of receipt of the notice of noncompliance from the board. Where a hearing is not requested pursuant to this section, payment of any assessment shall not constitute an admission of any noncompliance charged.

15. Code section 8509 states:

"Branch office" is any fixed place of business in addition to the location of the principal office for which the company registration is issued, where records are kept, mail received, statements rendered, money is collected, or requests are received for service or bids, or information is given pertaining to the practice of pest control, other than governmental offices.

16. Code section 8516 states, in pertinent part:

(b) No registered company or licensee shall commence work on a contract, or sign, issue, or deliver any documents expressing an opinion or statement relating to the absence or presence of wood destroying pests or organisms until an inspection has been made by a licensed Branch 3 field representative or operator. The address of each property inspected or upon which work is completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 business days after the commencement of an inspection or upon completed work.

Every property inspected pursuant to subdivision (b) of Section 8516.1, or Section 8518, or subdivision (b) of this section shall be assessed a filing fee pursuant to Section 8674.

Failure of a registered company to report and file with the board the address of any property inspected or work completed pursuant to Section 8516.1, Section 8518, or this section are grounds for disciplinary action and shall subject the registered company to a fine of not more than two thousand five hundred dollars ($2,500).

A written inspection report conforming to this section and on a form approved by the board shall be prepared and delivered to the person requesting the inspection or to the person's designated agent within 10 business days of the inspection, except that an

inspection report prepared for use by an attorney for litigation purposes is not required to be reported to the board. The report shall be delivered before work is commenced on any property. The registered company shall retain for three years all original inspection reports, filed notes, and activity forms.

Reports shall be made available for inspection and reproduction to the executive officer of the board or his or her duly authorized representative during business hours. Original inspection reports or copies thereof shall be submitted to the board upon request within two business days. The following shall be set forth in the report:

(6) A foundation diagram or sketch of the structure or structures or portions of the structure or structures inspected, indicating thereon the approximate location of any infested or infected areas evident, and the parts of the structure where conditions that would ordinarily subject those parts to attack by wood destroying pests or organisms exist.

(7) Information regarding the substructure, foundation walls and footings, porches, patios and steps, air vents, abutments, attic spaces, roof framing that includes the eaves, rafters, fascias, exposed timbers, exposed sheathing, ceiling joists, and attic walls, or other parts subject to attack by wood destroying pests or organisms. Conditions usually deemed likely to lead to infestation or infection, such as earth-wood contacts, excessive cellulose debris, faulty grade levels, excessive moisture conditions, evidence of roof leaks, and insufficient ventilation are to be reported.

(10) Recommendations for corrective measures.

17. Section 8518 of the Code states, in pertinent part:

When a registered company completes work under a contract, it shall prepare, on a form prescribed by the board, a notice of work completed and not completed, and shall furnish that notice to the owner of the property or the owner's agent within 10 working days after completing the work. The notice shall include a statement of the cost of the completed work and estimated cost of work not completed.

The address of each property inspected or upon which work was completed shall be reported on a form prescribed by the board and shall be filed with the board no later than 10 working days after completed work.

18. Code section 8612 states:

The license of qualifying managers and company registration shall be prominently displayed in the registered company's office, and no registration issued hereunder shall authorize the company to do business except from the location for which the registration as issued. Each registered company having a branch office or more than one branch office shall be required to display its branch office registration prominently in each branch office it maintains.

When a registered company opens a branch office it shall notify the registrar in writing on a form prescribed by the board and issued by the registrar in accordance with rules and regulations adopted by the board. The notification shall include the name of the

individual designated as the branch supervisor and shall be submitted with the fee for a branch office prescribed by this chapter.

19. Code section 8638 states:

Failure on the part of a registered company to complete any operation or construction repairs for the price stated in the contract for such operation or construction repairs or in any modification of such contract is a ground for disciplinary action.

20. Code section 8639 states:

Aiding or abetting an unlicensed individual or unregistered company to evade the provisions of this chapter or knowingly combining or conspiring with an unlicensed individual or unregistered company, or allowing one's license or company registration to be used by an unlicensed individual or unregistered company, or acting as agent or partner or associate, or otherwise, of an unlicensed individual or unregistered company to evade the provisions of this chapter is a ground for disciplinary action.

21. Code section 8641 states:

Failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for wood-destroying pests or organisms, or furnishing a notice of work completed prior to the completion of the work specified in the contract, is a ground for disciplinary action.

22. Code section 8642 states:

The commission of any grossly negligent or fraudulent act by the licensee as a pest control operator, field representative, or applicator or by a registered company is a ground for disciplinary action.

REGULATORY PROVISIONS

23. California Code of Regulations, title 16, section 1912, states:

A registered company that opens a branch office shall notify the board of that fact within 30 days on a written form provided by the board (see form No. 43L-15 at the end of this section) accompanied by the required registration fee.

24. California Code of Regulations, title 16, section 1937.14, states:

All work completed by licensees or registered companies shall be done within the specific requirements of any plans or specifications and shall meet accepted trade standards for good and workmanlike construction in any material respect, and shall comply with provisions of Section 2516(c)(1), (2), (4) and (6) of Title 24, California Code of Regulations.

25. California Code of Regulations, title 16, section 1990, states, in pertinent part:

(a) All reports shall be completed as prescribed by the board. Copies filed with the board

shall be clear and legible. All reports must supply the information required by Section 8516 of the Code and the information regarding the pesticide or pesticides used as set forth in Section 8538 of the Code, and shall contain or describe the following:

(3) Infestations, infections or evidence thereof.

(4) Wood members found to be damaged by wood destroying pests or organisms.

(b) Conditions usually deemed likely to lead to infestation or infection include, but are not limited to:

(2) Inaccessible subareas or portions thereof and areas where there is less than 12 inches clear space between the bottom of the floor joists and the unimproved ground area.

(3) Excessive Cellulose Debris. This is defined as any cellulose debris of a size that can be raked or larger. Stumps and wood imbedded in footings in earth contact shall be reported.

(4) Earth-wood contacts.

(5) Commonly controllable moisture conditions which would foster the growth of a fungus infection materially damaging to woodwork.

(d) Even though the licensee may consider the following areas inaccessible for purposes of inspection, the licensee must state specifically which of these areas or any other areas were not inspected and why the inspection of these areas is not practical: furnished interiors; inaccessible attics or portions thereof; the interior of hollow walls; spaces between a floor or porch deck and the ceiling or soffit below; stall showers over finished ceilings; such structural segments as porte cocheres, enclosed bay windows, buttresses, and similar areas to which there is no access without defacing or tearing out lumber, masonry or finished work; built-in cabinet work; floors beneath coverings, areas where storage conditions or locks make inspection impracticable.

(f) The following language shall appear just prior to the first finding/recommendation on each separated report:

"This is a separated report which is defined as Section I/Section II conditions evident on the date of the inspection. Section I contains items where there is visible evidence of active infestation, infection or conditions that have resulted in or from infestation of infection. Section II items are conditions deemed likely to lead to infestation or infection but where no visible evidence of such was found. Further inspection items are defined as recommendations to inspect area(s) which during the original inspection did not allow the inspector access to complete the inspection and cannot be defined as Section I or Section II."

26. California Code of Regulations, title 16, section 1991, states, in pertinent part:

(a) Recommendations for corrective measures for the conditions found shall be made as required by paragraph 10 of subdivision (b) of Section 8516 of the code and shall also conform with the provisions of Title 24 of the California Code of Regulations and any other applicable local building code, and shall accomplish the following:

(5) Structural members which appear to be structurally weakened by wood-destroying pests

to the point where they no longer serve their intended purpose shall be replaced or reinforced. Structural members which are structurally weakened by fungus to the point where they no longer serve their intended purpose shall be removed or, if feasible, may remain in place if another structural member is installed adjacent to it to perform the same function, if both members are dry (below 20% moisture content), and if the excessive moisture condition responsible for the fungus damage is corrected. Structural members which appear to have only surface fungus damage may be chemically treated and/or left as is if, in the opinion of the inspector, the structural member will continue to perform its originally intended function and if correcting the excessive moisture condition will stop the further expansion of the fungus.

(8) Exterminate all reported wood-destroying pests. Such extermination shall not be considered repair under section 8516(b)(12) of the code. If evidence indicates that wood-destroying pests extend into an inaccessible area(s), recommendation shall be made to either:
(A) enclose the structure for an all encompassing treatment utilizing materials listed in Section 8505.1 of the code, or
(B) use another all encompassing method of treatment which exterminates the infestation of the structure, or
(C) locally treat by any or all of the following:
1. exposing the infested area(s) for local treatment,
2. removing the infested wood,
3. using another method of treatment which exterminates the infestation. (If any recommendation is made for local treatment, the report must contain the following statement: "Local treatment is not intended to be an entire structure treatment method. If infestations of wood-destroying pests extend or exist beyond the area(s) of local treatment, they may not be exterminated.")
When a complete inspection is performed, a recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests.
When a limited inspection is performed, the inspection report shall state that the inspection is limited to the area(s) described and diagrammed. A recommendation shall be made to remove or cover all accessible pellets and frass of wood-destroying pests in the limited areas. The limited inspection report shall include a recommendation for further inspection of the entire structure and that all accessible evidence of wood-destroying pests be removed or covered.

(9) For the extermination of subterranean termite infestations, treat an infested area under the structure when subterranean termite tubes are found connected to the ground or when active infestations are found in the ground. Subterranean termite tubes shall be removed where accessible, except where a licensee is using an above ground termite bait station that requires the use of the termite tubes to be effective. Where a licensee is using an above ground termite bait station that requires the use of termite tubes to be effective, subterranean termite tubes can remain in place for the duration of the licensee's use of the termite bait stations. At the conclusion of the treatment, the subterranean termite tubes shall be removed.

(12) Repair a stall shower if it is found to leak when water tested for a minimum of fifteen (15) minutes after the shower drain has been plugged and the base filled to within one (1) inch of the top of the shower dam. Stall showers with no dam or less than two (2) inches to the top of the dam are to be water tested by running water on the unplugged shower base for a minimum of five (5) minutes. Showers over finished ceilings must be

inspected but need to be water tested. If water stains are evidence on the ceiling, recommendations shall be made for further inspection and testing.

27. California Code of Regulations, title 16, section 1993, states, in pertinent part:

All of the following reports must be in compliance with the requirements of Section 8516 of the code. All reports must be on the form prescribed by the board.

(d) A supplemental report is the report on the inspection performed on inaccessible areas that have been made accessible as recommended on a previous report. Such report shall indicate the absence or presence of wood-destroying pests or organisms or conditions conducive thereto. This report can also be used to correct, add, or modify information in a previous report. A licensed operator or field representative shall refer to the original report in such a manner to identify it clearly.

28. California Code of Regulations, title 16, section 1996.3, states:

(a) The address of each property inspected and/or upon which work was completed shall be reported on a form prescribed by the Board and designated as the WDO Inspection and Completion Activity Report Form (see Form No. 43M-52 Rev. 5/03) at the end of this section. This form shall be prepared byeach registered company and shall comply with all of the requirements pursuant to Section 8516(b), and 8518.

(b) The form shall contain the following information for each property inspected and/or upon which work was completed.

(1) Company Name
(2) Company registration number
(3) Branch office registration number (when a branch office issues an inspection report or notice of work completed
(4) Date of Activity
(5) Address of property inspected or upon which work was completed, including zip code
(6) Activity Code
(7) License number of licensee performing the inspection

(c) Failure of a registered company to report and file with the Board the address of any property inspected or upon which work was completed pursuant to Section 8516(b) or 8518 are grounds for disciplinary action and subject to a fine of not more then two thousand five hundred dollars ($2,500).

COST RECOVERY/RESTITUTION

29. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

30. Government Code section 11519(d) provides, in pertinent part, that the Board may require restitution of damages suffered as a condition of probation in the event probation is ordered.

LIEBER PROPERTY

31. On or about July 23, 2009, Respondent inspected the property located at 846 West Hillcrest Boulevard, in Monrovia, California, ("Lieber property"), for wood destroying pests and organisms for escrow purposes, and on that same day issued Wood Destroying Pests and Organisms Inspection Report No. 5527 ("Inspection Report No. 5527"). Inspection Report No. 5527 consisted of five findings and recommendations.

32. On or about August 17, 2009, Respondent issued a Standard Notice of Work Completed and Not Completed ("Completion Notice"), certifying that all of the work recommended in Inspection Report No. 5527, dated July 23, 2009, had been completed in accordance with the Board's rules and regulations, and that the property was now free of evidence of active infestation or infection in visibly accessible areas.

33. On or about August 29, 2009, escrow closed.

34. On or about October 2, 2009, Foss Termite Control, Inc. ("Foss") inspected the Lieber property for wood destroying pests and organisms. Foss prepared an inspection report consisting of four findings and recommendations.

35. On or about October 14, 2009, the Board received a complaint from the homeowner, Elaine Lieber, due to Foss's findings of evidence of termites and termite damage to the structure.

36. On or about October 26, 2009, the Board notified Respondent of the homeowner's complaint.

37. On or about November 10, 2009, Respondent notified the Board that he contacted and met with the homeowner and is addressing the problems.

38. On or about December 14, 2009, a Board specialist performed a limited inspection of the Lieber property and noted violations.

39. On or about December 30, 2009, the Board specialist prepared and issued a Report of Findings along with a Notice ordering Respondent to bring the property into compliance by

correcting the items described in the Report of Findings and to submit a corrected inspection report and Notice of Work Completed and Not Completed to the Board within thirty (30) days with respect to the inspection performed on July 23, 2009.

40. On or about February 17, 2010, Respondent re-inspected the Lieber property and thereafter issued a Complete Wood Destroying Pests and Organisms Inspection Report No. 5527A ("Inspection Report No. 5527A"), consisting of 12 findings and 10 recommendations.

41. On or about February 19, 2010, Respondent issued a Completion Notice, certifying that all of the work recommended in Inspection Report No. 5527A, dated February 17, 2010, had been completed in accordance with the Board's rules and regulations.

42. On or about March 10, 2010, a Board specialist went to the Lieber property to check the Respondent's work for compliance, and found that Respondent was not in compliance.

43. On or about March 19, 2010, Respondent re-inspected the Lieber property and thereafter issued a Complete Wood Destroying Pests and Organisms Inspection Report No. 5527B ("Inspection Report No. 5527B"), consisting of 13 findings and 10 recommendations.

44. Respondent failed to bring the Lieber property into compliance.

FIRST AMENDED ACCUSATION

FIRST CAUSE FOR DISCIPLINE

(*Inspection Report Violations*)

45. Respondents Zappen Exterminating and Zappen's licenses are subject to discipline under Code section 8641, concerning the Lieber property, in that, on Inspection Report No. 5527, dated July 23, 2009, Inspection Report No. 5527A, dated February 17, 2010, and Inspection Report No. 5527B, dated March 19, 2010, Respondent failed to include language defining Section I/Section II conditions on each report, as defined in California Code of Regulations, title 16, section 1990(f).

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SECOND CAUSE FOR DISCIPLINE

(Failure to Comply with the Code)

46. Respondents Zappen Exterminating and Zappen's licenses are subject to discipline under Code section 8641, in that, concerning the Lieber property, Respondent failed to comply with the following Code sections:

Section 8516(b) and Section 8518:

a. Respondents failed to issue an inspection report and completion notice for the repair work completed at the wood deck in or about October 2009.

Section 8516(b)(6):

b. Respondents failed to include an accurate diagram of the incident address on the July 23, 2009, February 17, 2010, and March 19, 2010, inspection reports. The diagram on the July 23, 2009, inspection report failed to include the inaccessible portion of the substructure, the wood deck/patio staircase, the entryway to the house, and the fireplace. The diagram on the February 17, 2010, inspection report failed to include the inaccessible portion of the substructure, the side carriage porch, the wood deck/patio staircase, the entryway to the house, and the fireplace.

c. Respondents failed to include on the inspection report diagram, the correct location of the reported old evidence of subterranean termites and subterranean termite damage in the substructure, and the decay fungi and decay fungi damage at the side carriage porch on the March 19, 2010, inspection report.

Section 8516(b)(6) and (7):

d. Respondents failed to report cellulose debris in the substructure on the July 23, 2009, inspection report, and the full extent of the cellulose debris on the March 19, 2010, inspection report, as defined by California Code of Regulations, title 16, section 1990(b)(3).

e. Respondents failed to report the full extent of the evidence of subterranean termites in the substructure on the July 23, 2009, February 17, 2010, and March 19, 2010, inspection reports, as defined by California Code of Regulations, title 16, section 1990(a)(3).

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f. Respondents failed to report subterranean termite damage in the substructure on the July 23, 2009, inspection report, as defined by California Code of Regulations, title 16, section 1990(a)(4).

g. Respondents failed to report evidence of an excessive moisture condition (water stains) in the substructure on the July 23, 2009, inspection report, as defined by California Code of Regulations, title 16, section 1990(a)(5).

h. Respondents failed to report inaccessible portions of the substructure, due to an insulated sub-floor, on the July 23, 2009, and February 17, 2010, inspection reports, as defined by California Code of Regulations, title 16, section 1990(b)(2) and 1993(d).

i. Respondents failed to report decay fungi, decay fungi damage, and evidence of an excessive moisture condition (water stains) at the framing below the side carriage porch on the July 23, 2009, and February 17, 2010, inspection reports, as defined by California Code of Regulations, title 16, section 1990(a)(3) and (4), and 1990(b)(5).

j. Respondents failed to report evidence of subterranean termites in the attic framing on the July 23, 2009, and March 19, 2010, inspection reports, and the full extent of the evidence of subterranean termites in the attic on the February 17, 2010, inspection report, as defined by California Code of Regulations, title 16, section 1990(a)(3).

k. Respondents failed to report the drywood termite damage at the wood deck framing on the July 23, 2009, inspection report, and the full extent of the drywood termite damage at the wood deck on the February 17, 2010, and March 19, 2010, inspection reports, as defined by California Code of Regulations, title 16, section 1990(a)(4).

l. Respondents failed to report subterranean termite damage at the wood deck framing on the July 23, 2009, and March 19, 2010, inspection reports, and the full extent of the subterranean termite damage at the wood deck on the February 17, 2010, inspection report, as defined by California Code of Regulations, title 16, section 1990(a)(4).

m. Respondents failed to report earth-to-wood contact at the wood deck load posts on the July 23, 2009, inspection report, as defined by California Code of Regulations, title 16, section 1990(b)(4) and 1993(d).

n. Respondents failed to report decay fungi damage at the framing of the nook below the wood deck on the July 23, 2009, and February 17, 2010, inspection reports, as defined by California Code of Regulations, title 16, section 1990(a)(4).

o. Respondents failed to report evidence of an excessive moisture condition (water damage) and decay fungi damage at the storage area below the wood deck on the July 23, 2009, and February 17, 2010, inspection reports, as defined by California Code of Regulations, title 16, section 1990(a)(4) and 1990(b)(5).

p. Respondents failed to report portions of the attic that are inaccessible due to construction on the July 23, 2009, and February 17, 2010, inspection reports, as defined by California Code of Regulations, title 16, section 1990(d).

q. Respondents failed to report water damage at the wood deck storage area on the March 19, 2010, inspection report, as defined by California Code of Regulations, title 16, section 1990(b)(5).

r. Respondents failed to report decay fungi damage at the wood deck nook on the March 19, 2010, inspection report, as defined by California Code of Regulations, title 16, section 1990(b)(4).

s. Respondents failed to report the full extent of the substandard repair work previously completed at the wood deck on the March 19, 2010, inspection report.

t. Respondents failed to report substandard repair work previously completed at the wood deck on the February 17, 2010, inspection report.

Section 8516(b)(6) and (7) and (10):

u. Respondents failed to make a proper finding and recommendation regarding the reported fungus damage at the porch post on the July 23, 2009, inspection report; and at the deck/patio on the February 17, 2010, inspection report. The findings failed to report the cause of the infection, and the recommendations failed to include a recommendation to correct the excessive moisture condition that caused the infection, as defined by California Code of Regulations, title 16, section 1991(a)(5).

v. Respondents failed to make a proper finding and recommendation regarding the reported fungus damage at the wood deck storage area on the March 19, 2010, inspection report. The findings failed to report the cause of the infection, and the recommendation failed to include a recommendation to correct the excessive moisture condition that caused the infection, as defined by California Code of Regulations, title 16, section 1991(a)(5).

Section 8516(b)(10):

w. Respondents failed to make a proper recommendation regarding the reported evidence of subterranean termites in the substructure on the July 23, 2009, and February 17, 2010, inspection reports. The recommendations failed to include a recommendation to remove the accessible evidence of infestation, as defined by California Code of Regulations, title 16, section 1991(a)(9).

x. Respondents failed to make a recommendation for the water stains reported in the substructure, the evidence of drywood termites reported at the decks/patios, and the water stains reported at the decks/patios on the February 17, 2010, inspection reports, as defined by California Code of Regulations, title 16, section 1990(g).

y. Respondents failed to make a proper recommendation regarding the water stains in the substructure reported on the February 17, 2010, and March 19, 2010, inspection reports. A recommendation was not made to have the proper tradesmen determine the source of the water stains, and to make repairs if needed, as defined by California Code of Regulations, title 16, section 1990(b)(5).

z. Respondents failed to make a proper recommendation regarding the inaccessible portion of the substructure, reported on the March 19, 2010, inspection report. The recommendation failed to include a recommendation for further inspection of the inaccessible substructure, and the issuance of a "supplemental" inspection report, as defined by California Code of Regulations, title 16, section 1993(d).

aa. Respondents failed to make a proper recommendation regarding the reported evidence of drywood termites at the decks/patios on the March 19, 2010, inspection report. The

recommendation failed to include a recommendation to cover or remove the accessible evidence of infestation, as defined by California Code of Regulations, title 16, section 1991(a)(8).

bb. Respondents failed to make a proper recommendation regarding the drywood termite damage at the decks/patios reported on the March 19, 2010, inspection report. A recommendation was made to just patch the damage, when the damage needs to be replaced, as defined by California Code of Regulations, title 16, section 1991(a)(5).

THIRD CAUSE FOR DISCIPLINE

(*Workmanship*)

47. Respondents Zappen Exterminating and Zappen's licenses are subject to discipline under Code section 8641, in that, on the Lieber property, Respondents failed to complete all work to meet accepted trade standards for good and workmanlike construction in any material respect, as defined by California Code of Regulations, title 16, section 1937.14, in the following respects:

Inspection Report No. 5527, dated July 23, 2009:

a. Respondents failed to properly repair the fungus damage at the side porch post, in that instead of replacing the entire board, only a section was cut out and replaced, and the replaced section was loose.

b. Respondents failed to properly repair the damage at the wood deck framing, in that the replacements are not properly cut, nailed, or installed; some of the replacements are split; some of the damage was sloppily patched, when it should have been replaced; some of the damage was sloppily patched and not sanded; and the downspout was not properly installed.

Inspection Report No. 5527A, dated February 17, 2010:

c. Respondents failed to properly repair the reinforcements at the subterranean termite damage in the substructure, in that a cleat was not used to support the reinforcements; the reinforcements were either toe-nailed into the floor joist, or nailed through the floor joist into the reinforcements.

d. Respondents failed to properly repair the decay fungi damage and excessive moisture condition (water stains) at the framing below the side carriage porch, in that scrap lumber was

randomly installed under the porch, serving little or no purpose at all, and the boards that appeared to have a purpose were not properly nailed.

e. Respondents failed to properly repair the damage at the earth-to-wood contact at the wood deck load posts, in that instead of leveling the soil beneath the wood deck, a stretch was created around the load posts, which has already started to allow the earth to re-accumulate against the wood in the trenches.

f. Respondents failed to properly repair the decay fungi damage at the framing of the nook below the wood deck, in that it is not properly installed or nailed.

g. Respondents failed to properly repair the decay fungi damage at the framing of the storage area below the wood deck, in that the repair work is not properly installed.

FOURTH CAUSE FOR DISCIPLINE

(Violation of Contract)

48. Respondents Zappen Exterminating and Zappen's licenses are subject to discipline under Code section 8638, in that, concerning the Lieber property, Respondents failed to complete the following work, as set forth in the Completion Notice dated February 19, 2010:

a. Respondents failed to remove the cellulose debris in the substructure.

b. Respondents failed to repair the subterranean termite damage in the substructure.

c. Respondents failed to remove the evidence of subterranean termites in the attic.

d. Respondents failed to repair the drywood termite damage at the wood deck framing.

FIFTH CAUSE FOR DISCIPLINE

(Failed to Comply with Report of Findings)

49. Respondent's registration and operator's license are subject to discipline under Code section 8641, in that, Respondents failed to comply with Code section 8622, by failing to correct the items described in the Report of Findings within thirty (30) calendar days of receipt of the Notice, bringing the Lieber property into compliance with the Board's Notice and Report of Findings, dated January 5, 2010.

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SIXTH CAUSE FOR DISCIPLINE

(Aiding and Abetting)

50. Respondents Zappen Exterminating and Zappen's licenses are subject to discipline under Code section 8639, in that on or about March 19, 2010, on the Lieber property, Respondents aided or abetted an unlicensed individual or knowingly combined or conspired with an unlicensed individual, Ruben Salas, to evade the provisions of the Structural Pest Control Act, in that Ruben Salas performed an inspection of the attic space over the garage.

SEVENTH CAUSE FOR DISCIPLINE

(Grossly Negligent or Fraud Act)

51. Respondents Zappen Exterminating and Zappen's licenses are subject to discipline under Code section 8642, in that, on or about July 23, 2009, concerning the Lieber property, Respondent committed a grossly negligent or fraudulent act by failing to indicate on Inspection Report No. 5527, what type of report he was issuing.

EIGHTH CAUSE FOR DISCIPLINE

(Unregistered Branch Office)

52. Respondents Zappen Exterminating, Zappen and Strom's licenses are subject to discipline under Code sections 8509 and 8612, in conjunction with California Code of Regulations, title 16, section 1912, in that, from on or about August to October 2010, and other dates, Respondents operated a branch office which was not registered with the Board.

NINTH CAUSE FOR DISCIPLINE

(Failure to File Wood Destroying Pests and Organisms Inspection Reports)

53. Respondents Zappen Exterminating, Zappen and Strom's licenses are subject to discipline under Code sections 8516(b), in conjunction with California Code of Regulations, title 16, section 1996.3(a), in that, Respondents failed to file reports of Wood Destroying Pests and Organisms (WDO) activities with the Board on or after December 29, 2009, as required by law.

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PETITION TO REVOKE PROBATION

FIRST CAUSE TO REVOKE PROBATION

(Failure to Obey All Laws)

54. Probation Term/Condition 2 of the Decision and Order in Accusation Case No. 2009-37, found at page 4 of the Stipulated Settlement and Disciplinary Order under the heading "Obey All Laws", provides:

> " Respondents shall obey all federal, state and local laws, and all laws and rules relating to the practice of structural pest control."

55.. Respondents Zappen Exterminating and Zappen's probation is subject to revocation because they failed to comply with Probation Condition No. 2 referenced above. There are several violations of this condition. Each violation in and of itself is an independent ground to revoke probation. The facts and circumstances regarding this violation are that:

a. Respondents Zappen Exterminating and Zappen operated an unregistered branch office at 1424 S. Sandsprings Drive, West Covina, California, 91793;

b. Respondents Zappen Exterminating and Zappen used an unregistered address on inspection reports of P. O. Box 1415, West Covina, California, 91793-1415;

c. Respondents Zappen Exterminating and Zappen failed to file any reports of Wood Destroying Pests and Organisms (WDO) activities with the Board since December 29, 2009, as required by law;

d. Respondents Zappen Exterminating and Zappen failed to notify the Board of their change of physical address and telephone number.

SECOND CAUSE TO REVOKE PROBATION

(Failure to File Quarterly Reports)

56. Probation Term/Condition 3 of the Decision and Order in Accusation Case No. 2009-37, found at page 4 of the Stipulated Settlement and Disciplinary Order under the heading "Quarterly Reports", provides:

> "Respondents shall file quarterly reports with the Board during the period of probation. Failure to file any quarterly report during the time period as required shall be considered a violation of probation."

57. Respondents Zappen Exterminating and Zappen's probation is subject to revocation because they failed to comply with Probation Condition No. 3 referenced above. The facts and circumstances regarding this violation are that Respondents failed to file any quarterly reports, as required.

THIRD CAUSE TO REVOKE PROBATION

(Failure to Post Notice of Suspension)

58. Probation Term/Condition 6 of the Decision and Order in Accusation Case No. 2009-37, found at page 5 of the Stipulated Settlement and Disciplinary Order under the heading "Posted Notice of Suspension", provides:

> "Respondents' structural pest control company, Zappen Exterminating, shall prominently post a suspension notice provided by the Board of the Board's order of suspension at its principal office and each of its branch offices in a place conspicuous and readable to the public. Said notice shall remain so posted during the entire period of actual suspension."

59. Respondents Zappen Exterminating and Zappen's probation is subject to revocation because they failed to comply with Probation Condition No. 6 referenced above. The facts and circumstances regarding this violation are that Respondents failed to post a Notice of Suspension at their principal office and each of the branch offices during the term of their suspension, as required.

THIRD CAUSE TO REVOKE PROBATION

(Failure to Take and Pass Licensure Examination)

60. Probation Term/Condition 9 of the Decision and Order in Accusation Case No. 2009-37, found at page 5 of the Stipulated Settlement and Disciplinary Order under the heading "Take and Pass Examination", provides:

> "Respondent shall take and pass the Structural Pest Control License examination currently required of new applicants for Operator Branch III before December 30, 2010. If Respondent does not pass the examination by December 30, 2010, Respondents' licenses shall be suspended until Respondent submits proof of passing the examination to the Board."

61. Respondents Zappen Exterminating and Zappen's probation is subject to revocation because they failed to comply with Probation Condition No. 9 referenced above. The facts and circumstances regarding this violation are that Respondent Zappen failed to take and pass the

Structural Pest Control License examination required of new applicants for Operator Branch III, and to submit proof of passing the examination to the Board before December 30, 2010, as required.

FIFTH CAUSE TO REVOKE PROBATION

(Failure to Complete and Pass Ethics Course)

62. Probation Term/Condition 10 of the Decision and Order in Accusation Case No. 2009-37, found at page 5 of the Stipulated Settlement and Disciplinary Order under the heading "Course - Ethics", provides:

> "Respondent Joseph Zappen must complete at his own expense, with a passing grade before December 30, 2010, a course in business ethics. Respondent shall submit the syllabus for the course to the Board for prior approval before taking the course. This course is in addition to the continuing education hours required for relicensure. If Respondent does not pass the examination by December 30, 2010, Respondents' licenses shall be suspended until Respondent submits proof of passing the examination to the Board. In addition, if Respondent does not pass the course by December 30, 2010, the Board shall consider this a violation of probation."

63. Respondents Zappen Exterminating and Zappen's probation is subject to revocation because they failed to comply with Probation Condition No. 10 referenced above. The facts and circumstances regarding this violation are that Respondent Zappen failed to take and pass a course in business ethics, and to submit proof of passing the course to the Board before December 30, 2010, as required.

SIXTH CAUSE TO REVOKE PROBATION

(Failure to Take and Pass Pre-Operator Courses)

64. Probation Term/Condition 11 of the Decision and Order in Accusation Case No. 2009-37, found at pages 5-6 of the Stipulated Settlement and Disciplinary Order under the heading "Pre-Operator Courses", provides:

> "Respondent must complete at his own expense, with a passing grade before December 30, 2010, the Branch III Pre-Operator courses, to be approved by the Board prior to taking the courses. If Respondent does not pass the courses by December 30, 2010, the Board shall consider this a violation of probation."

65. Respondents Zappen Exterminating and Zappen's probation is subject to revocation because they failed to comply with Probation Condition No. 11 referenced above. The facts and circumstances regarding this violation are that Respondent Zappen failed to take and pass the

Branch III Pre-Operator courses, and to submit proof of passing the courses to the Board before December 30, 2010, as required.

SEVENTH CAUSE TO REVOKE PROBATION

(Failure to Reimburse Costs)

66. Probation Term/Condition 12 of the Decision and Order in Accusation Case No. 2009-37, found at pages 6 of the Stipulated Settlement and Disciplinary Order under the heading "Costs Reimbursement", provides:

> "Respondents shall pay to the Board, pursuant to Business and Professions Code section 125.3, the cost of investigation and enforcement in this matter in the amount of $5,000. Respondents shall be permitted to pay these costs pursuant to a payment plan approved by the Board with the payment to be completed by January 1, 2012. All costs for the prior disciplinary case in Accusation No. 2008-14 must also be paid by January 1, 2012. Failure to make a timely payment according to the payment schedule, and/or failure to complete payment of costs recovery, shall constitute a violation of probation, which may subject Respondents' licenses to outright revocation."

67. Respondents Zappen Exterminating and Zappen's probation is subject to revocation because they failed to comply with Probation Condition No. 12 referenced above. There are two violations of this condition. Each violation in and of itself is an independent ground to revoke probation. The facts and circumstances regarding this violation are that:

a. Respondent Zappen failed to pay all costs owed for the prior disciplinary case in Accusation No. 2008-14 in the amount of $12,499.99, before January 1, 2012.

b. Respondent Zappen failed to pay all costs owed for the prior disciplinary case in Accusation No. 2009-37 in the amount of $5,000.00, before January 1, 2012.

EIGHTH CAUSE TO REVOKE PROBATION

(Failure to Allow Random Inspections)

68. Probation Term/Condition 13 of the Decision and Order in Accusation Case No. 2009-37, found at pages 6 of the Stipulated Settlement and Disciplinary Order under the heading "Random Inspections", provides:

> "Respondents shall reimburse the Board for one (1) random inspection per quarter by Board specialists during the period of probation, not to exceed $125 per inspection."

69. Respondents Zappen Exterminating and Zappen's probation is subject to revocation because they failed to comply with Probation Condition No. 13 referenced above. The

facts and circumstances regarding this violation are that Respondents Zappen Exterminating and Zappen failed to comply with random quarterly inspections during the period of probation, as required.

NINTH CAUSE TO REVOKE PROBATION

(Failure to Submit Notices of Work Completed)

70. Probation Term/Condition 14 of the Decision and Order in Accusation Case No. 2009-37 found at pages 6 of the Stipulated Settlement and Disciplinary Order under the heading "Submission of Notices of Work Completed", provides:

> "In addition to condition 13 above, Respondent shall provide the Board with a copy of each and every Notice of Work Completed issued during the period of probation within ten (10) days of the date of the notice for the Board's review, together with the corresponding inspection report. The Board specialists shall randomly inspect any and all of the work set forth in these reports during the period of probation and Respondent agrees to reimburse the Board for these inspections not to exceed $125 per inspection."

71. Respondents Zappen Exterminating and Zappen's probation is subject to revocation because they failed to comply with Probation Condition No. 14 referenced above. The facts and circumstances regarding this violation are that Respondents Zappen Exterminating and Zappen failed to submit notices of work completed during the period of probation, as required.

PRIOR DISCIPLINE/MATTERS IN AGGRAVATION

72. This is the third disciplinary Action against Respondents Zappen Exterminating and Zappen since September 27, 2007, as set forth fully in paragraphs 5 and 6 above. (See Exhibits "A" and "B"). Respondents Zappen Exterminating and Zappen have been on and continually in violation of their probation since December 3, 2008.

73. The facts alleged in this First Amended Accusation and Petition to Revoke Probation in violation of the Decision and Order in Case No. 2009-27, granting probation effective June 25, 2010, which extended the probation granted in the prior Decision and Order in Case No. 2008-14, effective December 3, 2008, establish that Respondents Zappen Exterminating and Zappen are not candidates for probation, and that their licenses should be revoked.

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Company Registration No. PR 3982

74. On or about November 29, 2005, the company registration paid a fine in the amount of $50 levied by the Los Angeles County Agricultural Commissioner for violating Code section 8505.17.

75. On or about July 2, 2008, the company registration paid a fine in the amount of $50 levied by the Los Angeles County Agricultural Commissioner for violating Code section 8505.17.

76. On or about December 14, 2009, the company registration paid a fine in the amount of $50 levied by the Los Angeles County Agricultural Commissioner for violating Code section 8505.17.

Operator License No. OPR 10234

77. On or about September 27, 2011, the operator's license paid fine in the mount of $50 levied by the Los Angeles County Agricultural Commissioner for violating Code section 8505.17.

78. On September 27, 2011, the operator's license paid Citation NO. CF 11-16 in the amount of $2,600, which was levied by the Structural Pest Control Board for violating title 16, sections 1911 and 1996.3 of the California Code of Regulations. Respondent Zappen did not comply with the Order of Abatement.

79. On November 1, 2011, the operator's license was cancelled for failure to comply with the Order of Abatement for Citation No. CF 11-16.

80. On November 17, 2011, the operator's license was reinstated due to compliance with the Order of Abatement for Citation No. CF 11-16.

OTHER MATTERS

81. Notice is hereby given that section 8620 of the Code provides, in pertinent part, that a respondent may request that a civil penalty of not more than $5,000 be assessed in lieu of an actual suspension of 1 to 19 days, or not more than $10,000 for an actual suspension of 20 to 45 days. Such request must be made at the time of the hearing and must be noted in the proposed

decision. The proposed decision shall not provide that a civil penalty shall be imposed in lieu of a suspension.

82. Pursuant to Code section 8624, if Operator's License No. OPR 10234, issued to Joseph W. Zappen, is suspended or revoked, the Board may suspend or revoke Company Registration No. PR 3982, issued to Zappen Exterminating.

83. Pursuant to Code section 8624, the causes for discipline established as to Zappen Exterminating, likewise constitutes causes for discipline against Joseph W. Zappen, regardless of whether he had knowledge of or participated in the acts or omissions which constitute causes for discipline against Zappen Exterminating.

84. Pursuant to Code section 8654, if discipline is imposed on Operator's License No. OPR 10234, issued to Joseph W. Zappen, and/or Operator's License No. OPR 11528 issued to John Charles Strom, then Joseph W. Zappen and/or John Charles Strom shall be prohibited from serving as an officer, director, associate, partner, qualifying manager, or responsible managing employee for any registered company during the time the discipline is imposed, and any registered company which employs, elects, or associates Joseph W. Zappen and/or John Charles Strom, shall be subject to disciplinary action.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Structural Pest Control Board issue a decision:

1. Revoking or suspending Company Registration Certificate Number PR 3982, issued to Zappen Exterminating;

2. Revoking or suspending Operator's License Number OPR 10234, issued to Joseph W. Zappen;

3. Revoking or suspending Operator's License Number OPR 11528, issued to John Charles Strom;

4. Revoking or suspending any other license for which Joseph W. Zappen is furnishing the qualifying experience or appearance;

5. Revoking or suspending any other license for which John Charles Strom is furnishing the qualifying experience or appearance;

6. Ordering restitution of all damages according to proof suffered by Elaine Lieber as a condition of probation in the event probation is ordered;

7. Prohibiting Joseph W. Zappen from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Company Registration Certificate Number PR 3982, issued to Zappen Exterminating;

8. Prohibiting John Charles Strom from serving as an officer, director, associate, partner, qualifying manager or responsible managing employee of any registered company during the period that discipline is imposed on Company Registration Certificate Number PR 3982, issued to Zappen Exterminating;

9. Ordering Joseph W. Zappen and John Charles Strom to pay the Structural Pest Control Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

10. Taking such other and further action as deemed necessary and proper.

DATED: 1/25/12

William H. Douglas

WILLIAM H. DOUGLAS
Interim Registrar/Executive Officer
Structural Pest Control Board
Department of Pesticide Regulation
State of California
Complainant